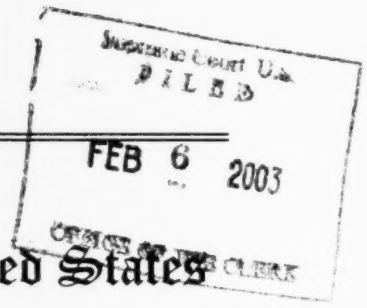
No. 02-1039



In The
Supreme Court of the United States

CHRISTOPHER TODD BROWN,

Petitioner,

v.

CHARLES LI, HENRY YANG, GALEN STUCKY, DANIEL E. MORSE, FRED LANGE, and SARAH PRITCHARD,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Does the First Amendment's free speech guarantee prohibit public university faculty from assigning and grading student academic work?

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
STATEMENT OF THE CASE	1
REASONS FOR DENYING THE PETITION	4
I. THE NINTH CIRCUIT DECISION DOES NOT CONFLICT WITH DECISIONS OF THE FIRST AND SIXTH CIRCUITS	6
II. THE COURT OF APPEALS' DECISION IS IN COMPLETE ACCORD WITH THE DECISIONS OF THIS COURT	9
III. THE PETITION RAISES NO ISSUE OF NATIONAL IMPORTANCE REQUIRING RESOLUTION BY THIS COURT	15
IV. THIS IS AN INAPPROPRIATE CASE FOR ADDRESSING THE ISSUES RAISED IN THE PETITION	16
CONCLUSION	18

TABLE OF AUTHORITIES

Page

FEDERAL CASES

Board of Curators, Univ. of Mo. v. Horowitz, 435 U.S. 78 (1978) 5, 11, 12, 13

Board of Education v. Pico, 457 U.S. 853 (1982) 4, 10

Board of Regents v. Southworth, 529 U.S. 217 (2000) 11

Cornelius v. NAACP Legal Defense Fund, 473 U.S. 788 (1985) 9

Hazelwood School District v. Kuhlmeier, 484 U.S. 260 (1988) ..... *passim*

Hurley v. Irish-American Gay Group, 515 U.S. 557 (1995) 17

Kincaid v. Gibson, 236 F.3d 342 (6th Cir. 2001) 7

Pacific Gas & Elec. v. California P.U.C., 475 U.S. 1 (1986) 17, 18

Papish v. University of Missouri, 410 U.S. 667 (1973) 9, 10

Parate v. Isibor, 868 F.2d 821 (6th Cir. 1989) 8

Regents of University of Michigan v. Ewing, 474 U.S. 214 (1985) 11, 12

Saucier v. Katz, 533 U.S. 194 (2001) 16

Settle v. Dickson County School Bd., 53 F.3d 152 (6th Cir. 1995) 8

Student Government v. Bd. of Tr. of the Univ. of Mass., 868 F.2d 473 (1st Cir. 1989) 8

Tinker v. Des Moines Community School Dist., 393 U.S. 503 (1969) 9, 10

TABLE OF AUTHORITIES – Continued

Page

United Mine Workers v. Gibbs, 303 U.S. 715 (1966) 4

Univ. of Pennsylvania v. EEOC, 493 U.S. 182 (1990) 11

Wooley v. Maynard, 430 U.S. 705 (1977) 17

STATEMENT OF THE CASE

University of California at Santa Barbara ("UCSB") rules place the responsibility for certifying that a master's degree candidate has met degree requirements on the candidate's faculty thesis committee. Excerpts of Record ("ER") at 62. The committee members and the candidate are made jointly responsible for the entire contents of the candidate's master's thesis, satisfactory completion of which is the primary requirement for the degree. Supplemental Excerpts of Record ("SER") at 32. The rules provide that theses and dissertations must meet norms for publication in the candidate's field of study. SER at 32, 63. These criteria apply to the acknowledgements sections, the content of which is strictly regulated in the world of scientific publication. Undisputed testimony in the record established that acknowledgments are important sections in scientific papers that are limited to (generally brief) recognition of individuals or entities that provided help or financial support for the research contained in the publication. SER at 84-85, 88, 93, 96, 106, 110-11, 135-36, 150-54, 161-62, 164; *see also* Petition for Certiorari ("Pet.") Appendix ("Pet. App.") at 7-8 (citing scientific style manuals). The University's rules explicitly adopt these standards stating that an acknowledgment, although optional, is "to acknowledge particular persons who helped you." SER at 35.

University rules further require that the members of the faculty thesis committee sign a statement, which must appear on the second page of the thesis, indicating that they approve the thesis. SER at 35. Candidates are required to submit, or "file," the approved thesis with the UCSB Davidson Library as a condition of conferral of the degree. SER at 32.

In the spring of 1999, Petitioner, a master's degree candidate in the UCSB Department of Materials Science, presented his thesis, without any acknowledgement or dedication, to the members of his thesis committee for approval. Each of them signed the approval page. Subsequently, Petitioner altered the thesis by including, immediately after the signed approval page, a profanity-laced two-page statement, titled "Disacknowledgments," in which he criticized various University officials, the former California Governor, the U.C. Regents, and "Science." ER at 39-40. In June 1999, without the consent or knowledge of the thesis committee, Petitioner filed the altered thesis in the library as if the committee had approved it. The committee members discovered that Petitioner had altered the thesis, and they refused to approve the addition of the Disacknowledgments. All three committee members agreed that the content, form, and presentation of the "Disacknowledgments" did not meet professional publication standards. Furthermore, they did not want to associate their names with the "Disacknowledgments" by signing approval of a thesis that included it. Petitioner, on the other hand, refused to file the *approved* thesis in the library, as required to obtain his degree.

Instead, Petitioner brought a series of University grievances and appeals challenging the committee members' refusal to approve the "Disacknowledgments." Petitioner's grievance was unanimously rejected in turn by the Materials Department's Academic Affairs Committee, the Associate Dean of the Graduate Division, the Graduate Council, and the campus Academic Freedom Committee. *See* SER 129, 163, 165. These bodies all concluded that, like any scientific paper, a master's thesis – including its acknowledgements section – is subject to rigorous editorial

review, in this case by the thesis committee. They also concluded that the Petitioner's "Disacknowledgments" violated professional publication standards and that the committee members therefore properly refused to approve it. Petitioner was not disciplined for the "Disacknowledgments" and was, on the contrary, repeatedly informed that he was free to publish his views in any manner he wished.[1] He was told, however, that he would not be awarded the degree unless he filed a version of the thesis approved by his committee in the library as University rules require.[2] Alternatively, Petitioner was given the option of finding faculty members willing to form a new committee and approve the thesis in the form in which Petitioner wished to submit it. SER 129.

Petitioner filed this action on June 16, 2000. His complaint asserted damages claims against the members of his thesis committee, the Dean of the UCSB Graduate Division, and the Chancellor of UCSB in their personal capacities for alleged violations of his free speech and due process rights under the U.S. and California Constitutions. He also asserted a claim for prospective injunctive relief against the same defendants and the UCSB Librarian in

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[1] As noted in the Petition, shortly after the Petitioner's alteration of the thesis was discovered, the Dean of Students, who is responsible for student discipline on the campus, demanded that Petitioner remove the "Disacknowledgments" and that he apologize to the individuals whom he had attacked. However, shortly afterward the University revoked the Dean of Students' letter and indicated that it did not represent the position of the University. SER at 172. Petitioner did not sue the Dean of Students

[2] The University ultimately awarded Petitioner his degree rather than disqualify him when a deadline for him to earn the degree or face academic disqualification was about to expire. *See* Pet. App. at 13-14.

their official capacities which sought to compel them to place his thesis, with the "Disacknowledgments" in the UCSB Library's public collection. The district court granted defendants' motion for summary judgment on all claims. On appeal, the Ninth Circuit Court of Appeals affirmed the district court's judgment as to the federal claims. It concluded that the district court had not expressly ruled on the Petitioner's state law claims and therefore remanded those claims to the district court with instructions either to dismiss them under *United Mine Workers v. Gibbs*, 383 U.S. 715 (1966), or address them on the merits. Pet. App. at 3, et seq.

REASONS FOR DENYING THE PETITION

The Petition challenges a holding that is both narrow and unsurprising:[3]

> [A]n educator can, consistent with the First Amendment, require that a student comply with the terms of an academic assignment. . . . [T]he First Amendment does not require an educator to change the assignment to suit the student's opinion or to approve the work of a student that, in

[3] The Petition does not challenge the court of appeals' ruling on Petitioner's due process claim and does not discuss its ruling with regard to his claim for prospective injunctive relief. Addressing the latter claim would require the Court to resolve the entirely separate issue of whether Petitioner has the right to require a public library to acquire his writings. *See Board of Education v. Pico*, 457 U.S. 853, 871 (1982) (plurality). Nor, of course, does Petitioner challenge the lower court's remand of the state law claims.

> his or her judgment, fails to meet a legitimate academic standard.

Pet. App. at 20. Petitioner's hyperbolic warnings about the implications of the court of appeals' decision (*see* Pet. at 17-18) find no basis in this limited holding.[4] The decision below does not permit university faculty or administrators to restrict student speech on campus, to punish students for expressing their views or for criticizing faculty or administrators. Nor does it "diminish[] the free speech rights of . . . university students . . . to the rights held by high school students." *See* Pet. at 17.[5] The decision below holds only that university faculty may lawfully assign and grade student academic work.

That common-sense holding requires no further review from this Court. First, it creates no "conflict" since no court has ever held that the First Amendment prohibits faculty from issuing and grading student assignments. The supposed "conflicting" court of appeals' decisions

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[4] Even worse is the absurdly off-point Brief of *Amicus Curiae* which fulminates against alleged free speech violations in the Academy but barely stops to address *this* case and addresses not at all the limited holding of the court below.

[5] Petitioner's stated "Questions Presented" depend on inaccurate assumptions about the facts of this case. Both Petitioner's Questions assume that Petitioner was "punished" for his speech, and his second Question assumes that there "is no question that the student fulfilled all requirements for the degree." But Petitioner was never "punished," nor did he fulfill the degree requirements; defendants simply refused to confer a degree on Petitioner when he had not *earned* it by filing an approved thesis in the University library as required by University regulations. In *Bd. of Curators of Univ. of Mo. v. Horowitz*, 435 U.S. 78, 86 (1978), this Court distinguished between disciplinary action and academic evaluation, a distinction that would be meaningless if the natural consequences of a poor academic evaluation constituted "punishment."

Petitioner cites, to the extent they address the question at all, actually *support* the lower court's holding. Second, the decision does not conflict with this Court's jurisprudence which makes clear that evaluation of assigned student academic work is not a violation of the First Amendment rights of the student. Finally, there are alternative grounds for the court of appeals' decision that would prevent this Court from even reaching the questions Petitioner posits. The Petition should be denied.

I. THE NINTH CIRCUIT DECISION DOES NOT CONFLICT WITH DECISIONS OF THE FIRST AND SIXTH CIRCUITS

The Petition's core argument is a challenge to the court of appeals' application in the university context of the deferential standard set forth in *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260 (1988). In *Hazelwood*, this Court held that "educators do not offend the First Amendment by exercising editorial control over the style and content of student speech in school-sponsored expressive activities so long as their actions are reasonably related to legitimate pedagogical concerns." *Id.* at 273.[6] While Petitioner attempts to pitch this case as an opportunity for the Court to speak broadly on the application of *Hazelwood* in higher education, it is not. The court below concluded that "*Hazelwood* provides a workable standard

[6] As Petitioner notes, in *Hazelwood*, the Court reserved the question whether to apply "the same degree of deference" to educators' judgment "with respect to school-sponsored expressive activities" such as newspapers and dramatic performances "at the college and university level." 484 U.S. at 273 n.7.

for evaluating a university student's First Amendment claim stemming from *curricular speech*." Pet. App. at 25 (emphasis added). The court of appeals' limitation of its holding to curricular speech, and the distinction it drew between curricular and extra-curricular student expression, are central to its decision. *See* Pet. App. at 21. Petitioner's contention that the decision below conflicts with decisions from the First and Sixth Circuits is wrong because it ignores this critical limitation.

In *Kincaid v. Gibson*, 236 F.3d 342 (6th Cir. 2001) (en banc), the Sixth Circuit addressed a First Amendment claim brought by two college yearbook editors who challenged college officials' confiscation of their yearbook, *The Thorobred*, before it could be distributed to the student body. The Sixth Circuit held that the yearbook was a limited public forum and that the college's suppression of the yearbook was arbitrary, unreasonable and therefore actionable. In reaching this holding, the Sixth Circuit distinguished *Hazelwood* – which held that a high school newspaper was *not* a public forum – on a number of grounds, grounds that also differentiate *Kincaid* from this case. For example, the Sixth Circuit discussed at length the fact that – in marked contrast to both *Hazelwood* and this case – college rules *prohibited* faculty control over the content of the yearbook. *See Kincaid*, 236 F.3d at 349-50. Most important, the Sixth Circuit expressly recognized the distinction between curricular and non-curricular speech relied on by the court of appeals below: "Nor is *The Thorobred* a closely-monitored classroom activity in which an instructor assigns student editors a grade, or in which a University official edits content. *See Hazelwood*, 484 U.S. at 268-69, . . ." *Kincaid*, 236 F.3d at 352. In contrast, Petitioner's thesis *was* a closely-monitored academic activity in

which the instructors assigned grades ("approved" or "not approved") and in which they were *required* by University rules to assume responsibility over content.[7]

In *Student Government v. Bd. of Tr. of the Univ. of Mass.*, 868 F.2d 473 (1st Cir. 1989), the First Circuit held that the First Amendment does *not* prohibit a university from withdrawing support for the university's Legal Services Office. The parties had argued about whether the Legal Services Office could be considered a "public forum." In describing the factors that determine whether a forum is public, the First Circuit stated in a footnote that *Hazelwood*, "in which the Court held that a high school newspaper whose production was part of educational curriculum was not a public forum, is not applicable *to college newspapers*." *Student Government v. Bd. of Tr.* at 480 n.6 (emphasis added). First, this statement is pure *dictum*. The First Circuit ultimately decided that forum analysis was altogether inapplicable to the facts presented by the case, *id.* at 476-77 & 480, so it never reached the question whether there was a "public forum" nor did it need to decide whether *Hazelwood* applies in the college context.[8]

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[7] Indeed, the Sixth Circuit's jurisprudence makes clear that faculty have extensive authority to assign and grade student work. *See Settle v. Dickson County School Bd.*, 53 F.3d 152, 155 (6th Cir. 1995) ("So long as the teacher limits speech or grades speech in the classroom in the name of learning and not as a pretext for punishing the student for her race, gender, economic class, religion or political persuasion, the federal courts should not interfere."); *Parate v. Isibor*, 868 F.2d 821, 828-30 (6th Cir. 1989) (holding that a university professor has a First Amendment right to assign grades and evaluate students as determined by his independent professional judgment).

[8] The First Circuit's holding regarding the inapplicability of forum analysis supports the Ninth Circuit decision, which also found forum

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Second, even this dictum does not conflict with the decision below. It expressly applies only to "college newspapers." It does not purport to create a constitutional right for students to be free from faculty review and evaluation of the contents of their assigned *academic* work.[9]

II. THE COURT OF APPEALS' DECISION IS IN COMPLETE ACCORD WITH THE DECISIONS OF THIS COURT

In *Hazelwood*, this Court recognized that the degree of control the Constitution permits educators to exercise over student speech depends on the nature and context of the speech involved. At one end of the spectrum, where educators' control is most limited, are cases such as *Tinker v. Des Moines Community School Dist.*, 393 U.S. 503 (1969) and *Papish v. University of Missouri*, 410 U.S. 667 (1973), which "address[ ] educators' ability to silence a student's personal expression that happens to occur on the school premises." *Hazelwood*, 484 U.S. at 271 & n.3. In contrast, *Hazelwood* held educators have far more control over "expressive activities that students, parents, and members

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analysis inapplicable. Pet. App. at 29 and n.5. Forum analysis applies in "determining when the Government's interest in limiting the use of its property to its intended purpose outweighs the interest of those wishing to use the property for other purposes." *Cornelius v. NAACP Legal Defense Fund*, 473 U.S. 788, 800 (1985). Because this case involves evaluation of academic work rather than access to government property – real or otherwise – forum analysis is not pertinent. The Petition does not contest this conclusion.

[9] It is also worth noting that the only support the First Circuit offered for its statement was footnote 7 from the *Hazelwood* opinion in which this Court *declined to decide* whether the decision was applicable to college newspapers. 484 U.S. at 273 n.7.

of the public might reasonably perceive to bear the imprimatur of the school." *Id.* at 271. Unlike the speech involved in *Tinker* and *Papish* "[t]hese activities may fairly be characterized as part of the school curriculum, whether or not they occur in a traditional classroom setting, so long as they are supervised by faculty members and designed to impart particular knowledge or skills to student participants and audiences." *Id.*

As this passage from *Hazelwood* suggests, the paradigm case of maximum control by educators is speech that is not merely "fairly . . . characterized" as part of the school curriculum but is central to the curriculum and does occur "in a traditional classroom setting." Thus, in *Hazelwood*, the Court found compelling the fact that the speech at issue involved course work "taught by a faculty member during regular class hours" in which "[s]tudents received grades and academic credit" and was part of "the educational curriculum." *Id.* at 268.[10] Indeed, the Court has treated the control of educators over required curricular speech and content as virtually a given. *E.g., Board of Education v. Pico*, 457 U.S. at 862 ("Our adjudication of the present case thus does not intrude into the classroom, or into the compulsory courses taught there.") (Plurality opinion).

Furthermore, the Court has repeatedly emphasized the importance of academic discretion and judicial nonintervention when the "control" being exercised is merely

[10] Petitioner's assertion that the court of appeals' "distinction between curricular and extracurricular cannot be reconciled with this Court's ruling in *Hazelwood*" (Pet. at 11) is unfathomable; that distinction is essential to *Hazelwood's* reasoning.

the direction and evaluation of student academic work. "'The determination of what manner of speech in the classroom . . . is inappropriate properly rests with the school board, (citation omitted) rather than with the federal courts.'" *Hazelwood*, 484 U.S. at 267; *see also Board of Regents v. Southworth*, 529 U.S. 217, 232 (2000) ("It is not for the Court to say what is or is not germane to the ideas to be pursued in an institution of higher learning."). "Considerations of profound importance counsel restrained judicial review of the substance of academic decisions." *Regents of University of Michigan v. Ewing*, 474 U.S. 214, 225 (1985). "When judges are asked to review the substance of a genuinely academic decision, such as this one, they should show great respect for the faculty's professional judgment." *Id.*; *see also Univ. of Pennsylvania v. EEOC*, 493 U.S. 182, 199 (1990) (same). This is true, in part, because "the decision of an individual professor as to the proper grade for a student in his course, . . . requires an expert evaluation of cumulative information and is not readily adapted to the procedural tools of judicial or administrative decision-making." *Board of Curators, Univ. of Mo. v. Horowitz*, 435 U.S. 78, 90 (1978).

The reasons courts have recognized the need for educators to assign and evaluate student curricular speech are almost too obvious to recite. Assignment of projects is an essential tool by which teachers shape the curriculum. Assigning students to "speak" on particular topics or even to defend specific viewpoints can have important educational benefits. As the court of appeals pointed out (Pet. App. at 29), faculty may, for example, seek to encourage

critical thinking by requiring students to write papers defending particular arguments or adopting particular perspectives.[11] Faculty must also be able to evaluate student work both to provide students feedback on their performance and to maintain academic standards. Out of misplaced concern for students' rights to say whatever they want in their curricular speech, Petitioner would create a constitutional prohibition against the faculty's use of traditional academic tools that would result in abolition of curriculum and academic standards. In the end, it is students who would be the losers.

Contrary to Petitioner's argument for reduced faculty control over curriculum at the university level, this Court's decisions show that the need for educators to direct and evaluate student academic speech is, if anything, greater as students move up the academic ladder. This Court has expressly recognized the importance of faculty discretion in controlling curriculum and defining academic standards in the higher education context in such cases as *Ewing, Southworth,* and *Horowitz*. Moreover, there is no logical reason why faculty control and discretion over academics would be more important in primary and secondary schools than in colleges and universities. Quite the contrary. As this

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[11] Petitioner dismisses the court of appeals' argument by claiming that "in this case" he "was not given an assignment to write his thesis from a particular viewpoint as part of a class exercise." Pet. at 11 n.12. That statement, at least with regard to the "Disacknowledgments" at issue, is inaccurate since University rules do require acknowledgments "to acknowledge particular persons who helped you." SER at 35. But even if Petitioner were factually correct, he cannot dispute that the rule he urges this Court to adopt would prohibit faculty from assigning students papers that are to be written from a particular viewpoint.

Court recognized in *Horowitz*, "as one advances through the varying regimes of the educational system, and the instruction becomes both more individualized and more specialized." 435 U.S. at 90. The highly specialized nature of the curriculum and the substantive expertise of the faculty in the subject-matter taught makes judicial intervention into University curricular decisions even more unwise than in primary and secondary schools where curriculum is often standardized and where its substantive content is more accessible to non-specialists. *See id.*

Petitioner argues that one of the factors that justified suppression of the newspaper stories at issue in *Hazelwood* – protection of an emotionally immature audience from exposure to inappropriate material – is inapplicable in the context of higher education. Pet. at 13-16. This argument attacks a strawman; defendants have never sought to justify their actions on the basis of protecting the student body from exposure to inappropriate material. Defendants did not, for example, prohibit Petitioner from publicly distributing his "Disacknowledgments" to the UCSB student body. Whether or not the particular "legitimate pedagogical concern" that justified suppression of the student paper in *Hazelwood* is applicable in a post-secondary setting, the educational concern at issue in *this* case – in the words of the Department of Materials Academic Affairs committee "teaching the student how to write a proper scientific paper" (ER at 45) – is clearly applicable, if not more important, in the university context.

The court of appeals' decision recognized that this is the paradigm case for maximum faculty control over student speech: it involves faculty review and control of required student academic work. Petitioner was given an

assignment – to write a master's degree thesis that met standards for publication in the field of materials science. Petitioner's thesis committee refused to give the thesis, with "Disacknowledgements," a passing grade because they believed did not meet the University's academic criteria, a decision that was upheld by multiple levels of academic review. The court of appeals was therefore correct to employ the deferential standard announced by this Court in *Hazelwood* which requires only that defendants show that "their actions are reasonably related to legitimate pedagogical concerns." Pet. App. at 18, *quoting Hazelwood*, 484 U.S. at 273. The court of appeals' application of that standard was straightforward. It determined, in accord with the undisputed evidence in the record, that requiring masters' theses, including acknowledgments sections, to comply with professional publication standards was "reasonably related" to a "legitimate pedagogical concern" – specifically, teaching a student how to write a proper scientific paper. Pet. App. at 26. The undisputed evidence also showed that the "Disacknowledgments" did not comply with professional publication standards.[12]

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[12] Petitioner contests this conclusion, contending that – contrary to the express provisions of the University's written policies requiring that theses meet professional publication standards and that acknowledgements "acknowledge particular persons who helped you," SER at 35 – some students had used their acknowledgments as a forum for personal expression of views unrelated to the subject of their thesis. First, the record does not support that claim. While some of the acknowledgments Petitioner submits (which represent a fraction of a percent of theses and dissertations at UCSB) are lacking in focus or resort to humor, the great majority in fact comply with the requirement that they "acknowledge particular persons who helped you." Indeed, it appears that Petitioner has identified only one other acknowledgment in all the thousands filed at UCSB (the one quoted in footnote 2 of his Petition)

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III. THE PETITION RAISES NO ISSUE OF NATIONAL IMPORTANCE REQUIRING RESOLUTION BY THIS COURT

The decision of the court of appeals narrowly holds only that faculty at public universities may direct and evaluate student curricular speech when there is a legitimate pedagogical reason to do so. It does not limit the rights of students to speak on campus, to criticize their universities or their administrators, or to publish whatever they want in student newspapers. Nor does it restrict the access of university students to speech on any subject. Rather, it simply recognizes that, in the limited context of students' assigned academic work, faculty must have the authority, subject to only the most limited judicial oversight, to assign and grade student speech. Thus, the decision below means only that, without violating the Constitution, faculty *may* dictate student academic assignments; *may* grade, in part, on how well students comply with the assignment; and *may* impose educationally reasonable standards on student papers such as the requirement that they meet professional publication norms.

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that, like his, contains an airing of grievances. Second, as the court of appeals noted, the existence of a few non-conforming acknowledgments would not create an issue of fact because the thesis committee was entitled to set its own academic standards and certainly entitled to conform to the written standards set out by the University, even if other committees had not. Pet. App. at 28-29. The mere fact that a faculty committee might have applied lower standards in the past does not give a subsequent student a constitutional right to application of the same low standard. The First Amendment does not mandate grade inflation.

None of this is radical or new. Faculty and students have for generations assumed that teachers may lawfully direct and grade student academic assignments. Our educational system is based on that assumption. There is no need for this Court to affirm that principle, and certainly no need or basis to overturn it. Nor does there appear to be any great wave of cases challenging the well-accepted roles of faculty and students in the assignment and evaluation of student work that calls for guidance from this Court. There is no need for this Court to address the issues supposedly raised by this Petition.

IV. THIS IS AN INAPPROPRIATE CASE FOR ADDRESSING THE ISSUES RAISED IN THE PETITION

Petitioner fails to address two independent grounds for the Ninth Circuit's decision that would likely prevent this Court from even reaching the First Amendment questions on which Petitioner seeks review. First, the Petition largely ignores the fact that the summary judgment ruling that led to this appeal was (at least with regard to the questions raised by the Petition) a ruling on the defendants' *qualified immunity defense* and that the court of appeals' decision was explicitly based on qualified immunity. *See* Pet. App. at 16, 29. To prevail in the face of a qualified immunity defense, Petitioner must demonstrate not only a violation of his rights, but also that the right violated was "clearly established." *Saucier v. Katz*, 533 U.S. 194, 201 (2001). "The relevant, dispositive inquiry in determining whether a right is clearly established is whether it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted." *Id.* at 202. Given that two federal courts have now found

defendants' conduct lawful, it is inconceivable that a "reasonable officer" should have concluded that same conduct was clearly unlawful. Accordingly, this Court's review could not possibly alter the outcome of the case, making it an inappropriate vehicle for addressing Petitioner's questions.

Second, as discussed above, University regulations require that thesis committee members personally endorse approval of the thesis by signing its second page. This requirement implicates the First Amendment right of the *committee members* to refuse to associate with speech with which they disagree as recognized in numerous of this Court's cases. *E.g., Wooley v. Maynard*, 430 U.S. 705, 714 (1977) ("A system which secures the right to proselytize religious, political, and ideological causes must also guarantee the concomitant right to decline to foster such concepts."); *Pacific Gas & Elec. v. California P.U.C.*, 475 U.S. 1, 15 (1986) (compelling utility to include a consumer organization's literature in its billing envelopes "impermissibly requires [utility] to associate with speech with which [it] may disagree"); *Hurley v. Irish-American Gay Group*, 515 U.S. 557, 573 (1995) (state "may not compel affirmance of a belief with which the speaker disagrees"). The members of Petitioner's thesis committee had a clear right to disassociate themselves with the "Disacknowledgments" by refusing to sign their names approving any thesis that contained it.[13] The court below expressly

[13] Petitioner has argued that the committee members could have added a "disclaimer" in their approval stating that they did not agree with the sentiments expressed in the "Disacknowledgments." First, University rules make no provision for such a "partial" approval of a thesis. Opening up such a possibility would seriously undermine the very purpose of thesis committee approval which is to place the

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recognized this right as an alternative basis for its holding. Pet. A-26. In light of the independent rights of his faculty committee members to decline approval of the thesis, this Court would not even reach the questions Petitioner presents.

CONCLUSION

For the reasons set forth above, Respondents respectfully request that this Court deny the Petition.

Dated: February 6, 2003

Respectfully submitted,

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imprimatur of the faculty members – and in a concrete way to stake their reputations – on the quality of the student's work as a means of maintaining high academic standards. Second, this Court has held that the ability of an unwilling speaker to issue a disclaimer does not cure the violation of his rights that results from forced association with speech of another. As the Court noted in *PG&E*, forcing a utility to include consumer group's literature in its mailings forces the utility "either to appear to agree with TURN's views or to respond. (Citation omitted.) That kind of forced response is antithetical to the free discussion that the First Amendment seeks to foster. (Citation omitted.) For corporations as for individuals, the choice to speak includes within it the choice of what not to say." *Pacific Gas & Elec.*, 475 U.S. at 15-16.